IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY THE TWENTY SECOND DAY OF APRIL
TWO THOUSAND AND EIGHT

PRESENT

THE HON'BLE MR JUSTICE D.S.R.VARMA

&

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION No.13192 of 2006

Between:

1 Union of India, rep.by Gerneral Manager,
East Goast Railway, Bhubaneswar
2 The Additional Divisional Railway Manager East Coast Railway,
Visakhapatnam
3 The Senior Divisional mechanical Engineer East Coast Railway,
Visakhapatnam

..... PETITIONERS

AND

Kota Rama Krishnarao S/o.late Appala Swamy
D.No.37-12-45/9/1, Plot No.333 NGGO`s colony, Kapparada
Muralinagar (PO), Visakhapatnam-07

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direction more in the nature of Certiorari to declare the order dated 31.3.2006 in OA.No.661/2005 on the file of the Central Administrative Tribunal, Hyderabad Bench, as being illegal,null and void and quash the same and pass

Counsel for the Petitioner: MR.R.S.MURTHY

Counsel for the Respondent No.: MR.CH.SUDHAKAR BABU

The Court made the following:

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THE HON'BLE MR JUSTICE D.S.R.VARMA

&

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION No.13192 of 2006

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ORDER: (per the Hon'ble Sri Justice K.C.Bhanu)

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The present writ petition is filed challenging the order in O.A.No.661/2005, dated 31.03.2006, on the file of the Central Administrative Tribunal, Hyderabad Bench, wherein the Tribunal gave a direction to the respondents therein, who are the petitioners herein, to replace the Enquiry Officer Sri G.R.Reddy by another Officer within a period of one month.

2. The brief facts that are necessary for disposal of the present writ petition may be stated as follows:

The respondent herein while working as Senior Section Engineer, CSL Depot, Fast Coast Railway, Visakhapatnam, a charge memo was issued to him on 29.09.2004, calling upon explanation for the irregularities as mentioned in the charge memo. The respondent herein denied the charges leveled against him, therefore, a regular departmental enquiry was ordered. Therefore, the petitioners herein appointed a Board of Enquiry to conduct major departmental enquiry on the charges leveled against the respondent herein. The grievance of the respondent is against one of the member of the Enquiry Board, i.e. Sri G.S.Reddy who was the fact finding Enquiry Officer, for which he made a representation before the 3rd petitioner herein to change the said member in the Board of Enquiry, but his representation was not

considered.

3. The petitioners herein filed counter admitting that Sri G.S.Reddy is conducting the fact finding enquiry and as per the Railway Board's letter, dated 27.01.1960, an Officer who conducted fact finding enquiry may also be appointed as a member of the disciplinary enquiry committee. It is not in dispute that the respondent herein took an objection by his representation dated 14.12.2004, attributing bias against Sri G.S.Reddy. An appeal filed before the 2nd petitioner herein for change of enquiry officer G.S.Reddy was also rejected.

4. It is not in dispute that Sri G.S.Reddy was appointed to conduct fact finding enquiry against the respondent herein. One of the instructions of the Railway Board is that whenever a delinquent Railway servant makes a request for the change of enquiry officer on the ground of bias, the departmental proceedings should be stayed and the application of the delinquent Railway servant along with relevant material should be forwarded to the appropriate reviewing authority for necessary orders. The petitioners herein have not forwarded relevant material to the reviewing authority.

5. There cannot be any dispute that in the departmental proceedings, impartial enquiry has to be conducted. When one of the members of the Board of Enquiry admittedly conducted a preliminary enquiry against the respondent herein, the petitioners ought not to have appointed him as one of the members of the Board of Enquiry. It is informed by the learned standing counsel for the petitioners that the entire enquiry proceedings have been concluded. No doubt Sri G.S.Reddy is not only the Enquiry Officer, but he is only one of the members of the Board of Enquiry. But at the same time, the petitioners ought not to have appointed him as a member of the Enquiry Board.

The enquiry has to be conducted fairly and impartially. Therefore, at this stage, a *de nova* enquiry cannot be ordered. In the circumstances, it is sufficient to replace the member of the Enquiry Board Sri G.S.Reddy with another suitable officer. Therefore, the impugned order of the Tribunal does not suffer from any infirmities so as to call for interference by this Court.

6. The Writ Petition is, accordingly, dismissed, with an observation that the Enquiry shall be continued, from the stage of enquiry, conducted by the Board of Enquiry in which Sri G.S.Reddy is a member, but with a change of one of the members of Board of Enquiry i.e. Sri G.S.Reddy. The petitioners are at liberty to appoint a suitable Officer in the place of Sri G.S.Reddy to continue the enquiry.

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D.S.R.VARMA,J

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K.C. BHANU, J

Dated: 22.04.2007
Dsr

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. Kota Rama Krishnarao S/o.late Appala Swamy
   D.No.37-12-45/9/1, Plot No.333 NGGO`s colony, Kapparada
   Muralinagar (PO), Visakhapatnam-07

2. 2CCs to

3. 2CD copies